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No. 93-874

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

In re HENRY ROBERT GREWE and
KATHY ANNE GREWE,

Debtors.

HENRY ROBERT GREWE and
KATHY ANNE GREWE,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONERS

TIMOTHY B. DYK
(Counsel of Record)
STEPHEN J. GOODMAN
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

PETER M. LIEB
JONES, DAY, REAVIS & POGUE
599 Lexington Avenue
New York, New York 10022
(212) 326-3939

Counsel for Petitioners

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1. Despite the United States' contention to the contrary, there is a direct conflict between the decision of the court below (the Fourth Circuit) and the decision of the Eleventh Circuit in *IRS v. Brickell Inv. Corp.* (*In re Brickell Inv. Corp.*), 922 F.2d 696 (11th Cir. 1991). As the United States concedes, *In re Brickell* held that bankruptcy courts are not "courts of the United States" within the meaning of 26 U.S.C. § 7430 (1988) ("§ 7430"), and therefore do not have jurisdiction to award attorney's fees under that statute, whereas the court below reached the opposite conclusion. (Brief for the United States in Opposition at 9 ("Opp."); Appendix to the Petition for Certiorari at 9a-10a ("App.")).

The United States argues that, even so, the result mandated by the Eleventh Circuit could be avoided by having the bankruptcy court submit proposed findings of fact and conclusions of law to the district court. (Opp. 9-10). But that argument concedes the existence of a conflict between the circuits; it merely questions the practical significance of the conflict. Moreover, the United States errs in suggesting that the conflict is insignificant. Under the Eleventh Circuit's suggested procedure, the district court would review the bankruptcy court's fees ruling under a strict *de novo* standard, whereas under the procedure implicitly sanctioned by the Fourth Circuit, the bankruptcy court can award the fees itself, and the district court would therefore review that ruling under a much more lenient "abuse of discretion" standard.[1]

2. Also, despite the United States' contention to the contrary, there is an implicit conflict between the decision of the court below and the decisions in *Perroton v. Gray* (*In re Perroton*), 958 F.2d 889 (9th Cir. 1992) and *In re Becker's Motor Transp., Inc.*, 632 F.2d 242 (3rd Cir. 1980), *cert. denied*, 450 U.S. 916 (1981). As petitioners explained in the Petition for Certiorari ("Petition"), (1) both *In re Perroton* and *In re Becker's Motor Transp.* held that bankruptcy courts are not "court[s] of the United States" within the meaning of 28 U.S.C. § 451 (1988) and (2) the legislative history of § 7430 indicates that Congress relied upon 28 U.S.C. § 451 in defining the scope of § 7430.[2] *See* H.R. Rep. 404, 97th Cong., 1st Sess. 12 n.1 (1981) (the term "court of the United States," as used in § 7430, means "any court described in 28 U.S.C. § 451 or the Tax Court"); Staff of the Joint Comm. on Taxation, 97th Cong., 2d Sess., *General*

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[1] *See, e.g., In re Chambers*, 140 B.R. 233, 237, 240 (N.D. Ill. 1992) (after holding that bankruptcy courts are "courts of the United States" within the meaning of § 7430, and that they therefore have jurisdiction to award attorney's fees under that statute, the court further held that "[a]wards or denial of awards of attorney's fees under Section 7430 are reviewed under an abuse of discretion standard") (citations omitted).

[2] Petition 13-15.

Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982 446 n.2 (Joint Comm. Print 1982) (same). Accordingly, for a court to hold that bankruptcy courts are not "court[s] of the United States" within the meaning of 28 U.S.C. § 451 is equivalent to holding that they are not "court[s] of the United States" within the meaning of § 7430 -- a holding which conflicts with that of the court below.

The United States concedes that in enacting § 7430, the 97th Congress relied upon the definition of "court of the United States" contained in 28 U.S.C. § 451. (Opp. 11-12). However, the United States argues that "[t]he legislative history of subsequent amendments to the statute indicates" that Congress actually intended for § 7430 to apply to tax cases in any federal court. (Opp. 12). Specifically, the United States notes that when the 99th Congress made certain amendments to § 7430 (amendments which did not concern the issue of which court proceedings were covered by the statute), a conference report stated that § 7430 applies to tax cases "in *any* Federal court." (*Id.*). Under this Court's precedents, however, it is the legislative history of the Congress which enacted § 7430, and not the views of a later Congress, that must guide this Court's interpretation of the statute.

In *Oscar Mayer & Co. v. Evans*, 441 U.S. 750 (1979), this Court resolved a dispute as to the meaning of Section 14(b) of the Age Discrimination in Employment Act. Legislative history from 1967 (when the Act was enacted) supported petitioners' interpretation of the statute. In rejecting a contrary interpretation of Section 14(b), based on a Committee Report that accompanied certain 1978 amendments to the Act,[3] the Court stated:

> We are not persuaded. Senate Report No. 45-943 was written 11 years after the ADEA was passed in 1967, and such "[l]egislative observations . . . are in no sense part of

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[3] As in the present case, the amendments themselves did not deal with the issue being disputed. 441 U.S. at 758 n.5.

> the legislative history." . . . "It is the intent of the Congress that enacted [the section] . . . that controls."

441 U.S. at 758 (Citations omitted). *See also, e.g., Mackey v. Lanier Collections Agency & Service, Inc.*, 486 U.S. 825, 839-840 (1988) (it is the intent of the Congress that enacted the statute, and not the "opinion of [a] later Congress," that controls).

3. The issue presented by this case -- whether bankruptcy courts are "court[s] of the United States" within the meaning of § 7430 (and, consequently, within the meaning of 28 U.S.C. § 451) -- is an important and recurring issue in federal bankruptcy law. As noted in the Petition, it has divided the lower federal courts and created a 3-1 split among the federal courts of appeals. (Petition 12-15). The United States itself has argued both sides of this issue before various lower federal courts. (Petition 13). Moreover, the issue has implications that go well beyond the proper application of § 7430 itself, including (1) whether bankruptcy courts have the power to allow proceedings *in forma pauperis* under 28 U.S.C. § 1915(a)(1988) and (2) whether non-Article III courts, other than bankruptcy courts, have the powers granted to "court[s] of the United States." (Petition 13-14, 18). It is therefore important that this Court now act to resolve the conflict among the circuits as to whether bankruptcy courts are indeed "court[s] of the United States" within the meaning of § 7430.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

TIMOTHY B. DYK
(Counsel of Record)
STEPHEN J. GOODMAN
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

PETER M. LIEB
JONES, DAY, REAVIS & POGUE
599 Lexington Avenue
New York, New York 10022
(212) 326-3939

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